

Original

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In re Application of

RICHARD RICHARDS

For Renewal of License  
of Low Power Television  
Station K33CG  
Sierra Vista, Arizona

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MM Docket No. 93-176

File No. BRTTL-921116IG

**RECEIVED**

**OCT 11 1994**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Review Board

**EXCEPTIONS TO THE INITIAL DECISION**

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## SUMMARY

Richard Richards, the licensee of Low Power Television Station K33CG, Sierra Vista, Arizona ("Station"), pled guilty to possession of less than 50 kgs (between 36 and 39 plants) of marijuana with intent to distribute and cultivating marijuana on federal property in violation of the criminal code. Ten of the plants he was tending were for a friend; thus, the distribution charge.<sup>\*/</sup> Richards never sold marijuana or any other illegal drug. He was a heavy user of marijuana and acknowledged he did grow -- one time in 1991 -- some plants on his property and on adjacent federal property for his personal use and for his friend. The plants were never used or distributed; they were seized by the authorities. In July, 1992, he was sentenced to (i) 5 years supervised probation, (ii) 7 months house arrest and (iii) substance abuse testing and treatment. As part of his plea agreement, he consented to a judgment pursuant to which he forfeited his home and his 82.5 acre ranch on which he grew carrots, garlic, etc., the total value of which was approximately \$1 million. The sentencing judge declined to recommend revocation of Richards' federal benefits as provided for by 21 U.S.C. §862(a)(1)(A).

Richards has not used marijuana since December 31, 1991. He has never used any illegal drug other than marijuana. Random drug tests administered by his probation officer beginning in July 1992 confirm that Richards has not used any illegal drugs since that time. His probation officer also attests to the fact that Richards has complied with the conditions of his probation and has posed no significant supervision problems.

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<sup>\*/</sup> Actually, taking into account the 10 plants he was tending for a friend, the total amount of marijuana he was growing for his use was 2.4 kgs.

Richards devotes his time to his farming enterprises on land which he now leases and to the maintenance and operation of the Station; programming includes talk shows, religious education, evangelists, religious music, prayer and church services and inspirational and family programs. Pursuant to an agreement with the Trinity Broadcasting Network ("Trinity"), the Station rebroadcasts the signal of Station KTBN-TV, Santa Ana, California, 24 hours a day. Richards plans to originate approximately 3.5 hours of programming per day. In exchange for his arrangement with Trinity, Richards receives 80% of all donations engendered by the Station. He averages approximately \$360.00 per month pursuant to this arrangement which he uses to defray extraordinary station expenses and for his living expenses.

The Administrative Law Judge (ALJ), in concluding that the Station's license should not be renewed, made findings upon which he based his conclusions predicated upon inferences he drew without any record support and considered other factors which were either never adjudicated and, where pertinent, would have been subsumed in the Judge's sentencing Order; i.e., were available to the Judge at the time of sentencing. The Judge imposed a light sentence (no jail time) and did not recommend revocation or denial of federal benefits.

Indicative of the ALJ's bias in this case is his treatment of the 26 community witnesses who testified as to Richards' honesty and integrity and his reputation in the community. Since those witnesses came from the community in which Richards is active, they were attuned to his religious beliefs and the message relayed by the Station's programming. The ALJ summarily dismissed their testimony as not establishing Richards' reputation, because he found they shared a common religious orientation with him which they wish to have advanced by the programming of the Station. Although the fact that Richards is a religious man and the Station broadcasts religious programming

in and of itself is not a basis for according Richards any credit, this does not mean that the testimony of the character witnesses who share his religious beliefs should be treated as a nullity.

There is little or no precedent upon which to rely. There are no cases dealing with Richards' relatively minor violation. He was not a "drug trafficker." There is an old saying that "if it walks like a duck and quacks like a duck, then it is a duck." As a corollary to this, if it doesn't walk like a duck and quack like a duck, then it doesn't merit Richards' being treated as a "duck" -- his license should be renewed.

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**EXCEPTIONS TO THE INITIAL DECISION**

Richard Richards ("Richards"), by his attorneys,<sup>1/</sup> hereby submits his Exceptions to the Initial Decision, (FCC 94D-7) ("ID") of Administrative Law Judge Richard L. Sippel ("ALJ") in the above-captioned case which was released on July 29, 1994.<sup>2/</sup>

**I. STATEMENT OF THE CASE**

Richards' application for the renewal of license for Low Power Television Station K33CG, Sierra Vista, Arizona ("Station"), was designated for hearing by Order ("HDO") (FCC 93-305) released June 28, 1993 (8 FCC Rcd 4339) based upon Richards' conviction for a drug violation involving marijuana. The burden of proceeding and the burden of proof were allocated to Richards. Evidentiary hearings were held in Washington, D.C. on December 7, 1993, and February 23, 1994. The record was closed on March 14, 1994 (Order, FCC 94M-98, released February 25, 1994).

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<sup>1/</sup> The law firm of Arent Fox Kintner Plotkin & Kahn is representing Richards on a *pro bono* basis.

<sup>2/</sup> Pursuant to motion, the Review Board extended the time for filing these Exceptions to and including October 11, 1994.



In his ID, the ALJ recommended denial of Richards' renewal<sup>3/</sup> based upon (1) Richards' plea to one count of an indictment, to wit "violating Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D) and 841(b)(5), possess (sic) with intent to distribute less than 50 kgs (Marijuana, I) and cultivating marijuana on federal property . . . ." (MMB Exhibit 3, p. 1).<sup>4/</sup> and (2) upon other evidence which found its way into the record,<sup>5/</sup> which was subsumed in the Judge's sentencing order (the facts were fully available to the Judge), imposing a light sentence and not recommending revocation or denial of federal benefits ("Judge's Order"). (R Ex. 28).

Richards moved to Sierra Vista, Arizona, sometime around 1968. Since that time, he worked in the health food field primarily as a grower and distributor of organic vegetables -- carrots, apples, peaches, beans, plums, nectarines, squash, garlic, etc. -- on his 82.5 acre ranch (R Ex.1, pp. 1-4) (Tr.44). Richards admits he was a heavy user of marijuana (R Ex. 30). Until 1991, he would purchase whatever marijuana he needed but when the price became prohibitive in 1991, he started to grow it for his personal use (Tr. 154).

The Station rebroadcasts the signal of Station KTBN-TV, Santa Ana, California, 24 hours a day. Station KTBN-TV originates the programming of the Trinity Broadcasting Network ("TBN"), a Christian religious network, which has affiliates throughout the United States and in other countries. The programming includes talk shows, religious education, evangelists, religious music, prayer and church services and inspirational and family programs. (R Ex. 1, p. 1).

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<sup>3/</sup> Specific portions of the ID will be cited as "ID ¶ \_\_, p. \_\_;" the hearing transcript will be cited as "Tr. \_\_;" Richards' exhibits will be cited as "R Ex. \_\_, p. \_\_;" and the Mass Media Bureau's exhibits will be cited as "MMB Ex. \_\_, p. \_\_."

<sup>4/</sup> 21 U.S.C. 841(a)(1) sets forth the violation; the other two sections refer to penalties, including for growing marijuana on federal land.

<sup>5/</sup> The validity or lack thereof cannot be ascertained based on the conviction or this record, as will be more fully discussed in these Exceptions. Based upon this extra record material, the ALJ expanded his ID by indulging inferences based upon his speculations on unsubstantiated facts.

Richards believes the Station's signal covers a population of between 50,000 and 60,000. Neither the Station's signal, nor TBN, is carried on cable in the area served by the Station; listeners must therefore have a UHF antenna and booster to receive it. Richards has personally installed about 250 antennas and boosters for this purpose. He believes the Station currently serves between 1,000 and 2,000 homes and that listeners depend on the Station as a source of programming espousing good moral values on a consistent basis. (Id. at pp. 1-2.)

Richards devotes approximately 20 hours per week to the maintenance and operation of the Station, including the installation of antennas and boosters for new listeners. The Station has no employees. (Id. at p. 2.) Richards spent approximately \$42,000 of his own money constructing the Station. He initially operated it at his own expense. Monthly operating expenses averaged approximately \$1,000 and the Station generated no revenue. This did not concern him because his purpose in constructing and operating the Station was not to make money. He later learned that TBN would enter into an affiliation agreement with an operator pursuant to which TBN would return 80% of all donations it received from Station listeners in order to defray operating costs. He entered into such an agreement with TBN and has been operating pursuant to it since March 1, 1992. Net revenue from the Station's operation averaged approximately \$360 per month for the first nine months of 1993. Richards uses this money for extraordinary Station expenses and for his living expenses. (Id. at pp. 2-3.)

As of December 1993, Richards was working toward his goal of originating local programming over the Station, which would include local news and sports, Chamber of Commerce information and children's programming. He has purchased two VHS cameras. He has visited approximately 10 local churches and discussed their participation in programming on the Station. He has also filmed services at three of these churches for test purposes. Under his agreement with TBN, he is permitted to originate up to 3.5 hours of programming per day. His goal is to broadcast

enough local programming to qualify for inclusion on the local cable system, which currently serves approximately 35,000 homes. (Id. at p. 3.)

On May 4, 1992, Richards pled guilty to possession of less than 50 kgs [between 36 and 39 plants, two of which were growing on his ranch (Tr. 49)]<sup>6/</sup> of marijuana with intent to distribute and cultivating marijuana on federal property in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D) and 841(b)(5).<sup>7/</sup> Richards never sold marijuana or any other illegal drug. He acknowledged he did grow some marijuana plants on his property and on adjacent federal property, but this was solely for personal use. The plants were seized by the authorities on July 25, 1991. Ten of the seized plants were transplanted plants of a friend of Richards who had asked Richards to tend them and to return them to him when they reached maturity. Richards agreed to do so. He understood that this agreement constituted an intent to "distribute" marijuana for purposes of his conviction. (Id. at pp. 3-4; R Ex.30).

On July 31, 1992, Richards was sentenced to (i) five years' supervised probation, (ii) seven months' house arrest and (iii) substance abuse testing and treatment. (MMB Ex. 3). Richards also consented to a judgment in a concurrent civil action pursuant to which he forfeited his 82.5 acre ranch, including his home, which he estimated to be worth approximately \$550,000 as of 1985, and double that amount in 1993. (R Ex.1, p. 4; Tr. 148-150.) The sentencing judge declined to recommend revocation of Mr. Richards' federal benefits (which would have included his Station license) as permitted under 21 U.S.C. Section 862(a)(1)(A). (MMB Ex. 3).<sup>8/</sup>

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<sup>6/</sup> For ease of reference, we will use 38 plants in these Exceptions.

<sup>7/</sup> Section 841(a)(1) deals with the crime, the other sections with the penalties.

<sup>8/</sup> "(1) Any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances shall -- (A) at the discretion of the court, upon the first conviction for such an offense be ineligible for any or all Federal benefits for up to 5 years after such conviction. . . ."

Richards has not used marijuana since December 31, 1991, nor has he every used any other illegal drug. (R Ex. 1, pp. 3-4). Random drug tests administered by his probation officer beginning in July 1992<sup>9/</sup> confirm that Richards has not used any illegal drugs since that time. According to his probation officer, Richards has complied with the conditions of his probation and has posed no significant supervision problems. (R Ex. 27).

In the mid-1980's, Richards became a born-again Christian. Since that time, as his faith grew and deepened, he came to realize that his use of marijuana, while strictly for personal purposes, was wrong. He had justified his marijuana use by the fact that it did not harm anyone else or himself. For him, it was a mild stimulant, much like coffee. Richards regrets his marijuana use, but is now focused on the present and the future, not on the past. He is committed to serving his community through the Station. (R Ex.1, pp. 4-5.)

## **II. QUESTIONS OF LAW**

1. Did the ALJ err in making findings and reaching conclusions which are not supported by the record?

2. Did the ALJ err in going beyond the record of conviction by considering other facts and by resorting to unsubstantiated conjectures based thereon, which were either never adjudicated and, where pertinent, were available to the Judge and thus subsumed in the Judge's Order upon conviction?

3. Is the growing of 38 marijuana plants on federal land, 19 of which would have been discarded and 10 of which were to be returned to a friend (for no consideration), the type of activity for which the Commission should take away a broadcast license; does the "penalty fit the crime?"

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<sup>9/</sup> The Order requiring such drug testing was issued in July 1992. (MMB Ex. 3).

### III. ARGUMENTS

**A. The ALJ obviously does not cotton to the use of marijuana<sup>10/</sup> and overreached the bounds of sound judicial discretion in placing the worst possible spin on the evidence of record by pyramiding supposition on conjecture and by making findings not supported by the record in order to justify his conclusion.**

Richards pled guilty to possession of marijuana with intent to distribute. He was growing 38 plants, 10 of which he was tending for a friend (thus the charge of distribution). He was a heavy marijuana user. This is it. Richards is not a Columbian drug lord. He regrets his use of marijuana and is now working to restructure his life. The ALJ's ID paints a picture of Richards which is not supported by any of the facts of record. Below we will address some of the more egregious findings and conclusions which reflect the extent of the ALJ's overreaching bias:

1. "Each of the issues [as designated] is based upon multiple criminal felony convictions." (ID, ¶3, p.1; ¶30, p.7). Count One of the indictment to which Richards pled, charged "That on or about the 25th day of July, 1991, at or near Hereford, in the District of Arizona, the defendant, Richard Richards, did knowingly and intentionally possess with intent to distribute a number of marijuana plants, a Schedule 1 controlled substance; in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D) and 841(b)(5)." (MMB Ex.1). This is the charge to which Richards pled guilty.<sup>11/</sup> The other counts in the indictment, which were dismissed, did not deal with either the use of or the distribution of drugs. Count 5 dealt with the offenses on his ranch set forth in Count 1, pursuant to which the government proposed to seize the property. While this Count was dismissed, the ranch was forfeited. There were no "multiple criminal felony convictions." This expansion of the facts sets the tone for the ID.

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<sup>10/</sup> Whether, as a social and moral issue, we approve the use of marijuana or not, the fact is that if the Commission were to deny licenses to everyone caught using marijuana, many current broadcasters would have to find other gainful employment.

<sup>11/</sup> As noted hereinabove, Section 841(a)(1) deals with the crime; the other sections deal with the penalties.

2. The ALJ found it disturbing that pursuant to a search warrant (prior to indictment), the authorities seized 18 scales that "were available to measure quantities of marijuana, heat sealers used to seal plastic bags, marijuana debris, two mobile telephones and two pagers." He further noted that marijuana debris was found in a "partially hidden room where marijuana leaves were hung to dry." (ID, ¶6, p.1). The ALJ is trying to relitigate Richards' conviction.<sup>12/</sup> If in fact the scales, debris, telephones and pagers were part of Richards' growing efforts, they were subsumed in the Judge's Order (all of these facts were available to the Judge, as they were to the Mass Media Bureau), imposing a light sentence and not recommending revocation or denial of federal benefits. It is neither appropriate nor does the Commission have the expertise to delve into factual issues such as these in order to relitigate Richards' conviction. Furthermore, Richards explained that he collected scales, that he was an active farmer and some of the scales were necessary for weighing produce for sale.<sup>13/</sup> (Tr. 79-81, 146-147). He also testified that the pagers and the mobile telephones were owned by others, including a relative and his girlfriend. (Tr. 47-49). Richards was not operating in the heart of a metropolitan area where such mobile telephones and pagers are common tools of the trade of drug dealers. He was operating a ranch in a relatively desolate part of Arizona where he not only farmed his ranch but leased three parcels of land -- 80 acres, 110 acres and 40 acres -- in furtherance of his farming ventures. (Tr. 146-147). The mobile telephones and pagers would be necessary for Richards and the others operating in a relatively desolate area to communicate with

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<sup>12/</sup> These facts are based on the results of a search pursuant to a warrant. The sentencing Judge did not make any findings with respect thereto, but the facts were available to the him when he imposed the sentence.

<sup>13/</sup> The ALJ finds it difficult to accept that someone weighing garlic for sale would need a scale to weigh the plastic bag or any other product for shipment. (ID ¶20, p.4). We don't know how to deal with this, but it certainly is a reflection of his bias in this case. Garlic as well as other herbs and small vegetables are weighed, packaged in plastic bags and sealed with a heat sealer. (Tr. 80-81).

people working these parcels of land. It should be noted that the debris was from one plant (Tr. 53) but this makes no difference, because Richards admitted that he used marijuana. As to the partially hidden room, Richards testified that the house was in the process of being remodeled and that the room was boarded up by court order pursuant to an agreement with his ex-wife to provide a safe environment for his children when they visited as the holes in the walls and floors certainly would present a danger to children. (Tr. 51-52). Whatever use was made of the boarded up room or the debris or the scales, we reiterate these factors were subsumed in the Judge's Order. The Commission cannot speculate that a more serious dereliction was involved.

3. The ALJ ruled that the government did not and could not seek revocation of his license pursuant to 21 U.S.C. 862, et seq. (ID, ¶9, p.2). This is true. However, 21 U.S.C. 862(a)(1)(A) provides that a sentencing judge may include in his sentence a recommendation that federal benefits be revoked (see fn. 8, above). The judge in Richards' case obviously did not feel the nature of his crime warranted such action. The ALJ conveniently overlooked this point.

4. The ALJ dismissed Richards' character witnesses as being confined to opinions of listeners to Richards' programming who share his religious beliefs holding that these opinions did not establish his reputation for truthfulness and honesty in the general Sierra Vista community. (ID, ¶11, p. 2). While religious beliefs and convictions, no matter how strong, cannot be used to aggrandize the character of a person, they should not be held against him. Richards is a religious man who is operating a religious station and his milieu involves people with similar beliefs. To summarily dismiss the 26 witnesses who stood up for Richards, all of whom were aware of his criminal conviction, is unwarranted. Furthermore, the opinions were not based on Richards' religious beliefs, but upon each person's knowledge of his honesty and integrity through their dealings with him, albeit that some of them may have known Richards through the operation of his religious low power station. For instance, Raymond H. Atchinson (who has known Richards for 23 years) attested to the

help Richards gave him and his family and the fact that Richards loved to help people by giving. He testified Richards "is a very honest man." (R Ex.2, p. 1). John R. Cantral, an Evangelist and missionary, has known Richards for approximately 10 years, both as a friend and a business associate and testified that "Richards is a man of integrity -- the type of man he would trust with his bank account or his wife." (R Ex.3, pp. 1-2). Dwight Collins, a farm hand, testified that "Richards has always been honest and forthright with me." (R Ex.4, p.1). Albert N. Dubois, who installs antennas, found Richards "to be honest and trustworthy, hard-working and unselfish with a clean and moral attitude." (R Ex.5, p.1). Leona Erber testified that Richards "has a reputation for honesty in the community" and "is always willing to give a helping hand and has done so many times for not only myself but many others." She added that "I can vouch for his honesty and integrity in all matters." (R Ex. 6, p.1). Claude R. Fowler, a computer specialist with the Army, "has dealt with Richards in a business sense and have found him to be a man of his word." (R Ex. 7, pp.1-2). James L. Hawk, Jr., an electronics engineer, testified that Richards has been very truthful and honest since he first met him in 1991. (R Ex. 8, pp. 1-2). Sherry L. Hunter, who helps Richards install antennas, has found Richards, based on his interaction with other members of the community, "to be fair, truthful, willing and helpful." (R Ex.11, pp.1-2). Rudolph Izaguirre testified that whatever Richards undertakes "will be done in a moral and honest manner." (R Ex.12, p.1). Donald R. Kesler, a computer systems analyst, believes Richards to be of high character and a very truthful individual. (R Ex.14, p.1). Curtis Quick testified that Richards "is well known in this area for his honesty and integrity." (R Ex. 18, pp.1-2). Earl W. Shannon found Richards to be "a man of good moral character" and testified that he has "never heard anyone question his truthfulness or make any negative comments about his actions or conversation." (R Ex.19, p.1). Norman Wicker, who has known Richards for 10 years, attested to Richards' high moral standards and the fact that he is approved of by various groups in the community and finds him to be "a man of his word."



(R Ex.20, p.1-2). Buck Parker Wood, a welder for Phelps Dodge Copper Corporation, testified that "Richards has always been honest to do business with." (R Ex.21, p.1). William Brent Nicola, a minister, testified that "Richards has consistently demonstrated a willingness 'walk in truth' and be a help to the less fortunate." (R Ex.22, p.1).<sup>14/</sup> They not only attested to Richards' honesty and integrity but to his willingness to help the less fortunate. We commend to the Review Board the reading of the Statements. (R Exs. 2 through 26 and 29). The testimony cannot be summarily dismissed on the basis that those who testified "share his religious beliefs." In footnote 3 to ¶11 of the ID (p. 2), the ALJ inserts an amazing statement to the effect that religious beliefs are irrelevant as an enhancement of Richards' credibility. Richards is not relying on his religious beliefs to enhance his credibility. He is relying on the opinions of members of the community who know him and have dealt with him, who also happen to be religious people.

5. The ALJ found it significant that Richards admitted to continued use of marijuana between his arrest by the County on July 25, 1991, through December 31, 1991. (ID, ¶14, p.3). Richards was arrested on July 25, 1991, by the County (Tr.45). He was not charged with using marijuana. The County charge was dropped (Tr. 112). Furthermore, the fact of his continued use of marijuana until December 31, 1991, was before the Court which sentenced him. (Tr.147-48).

6. The ALJ's finding that there is no evidence to show that Richards has been cured of substance abuse or that he has the habit under control is outrageous. He states that there is no evidence from his drug counselor on the status of his rehabilitation. (ID, ¶14, p. 3). The ALJ totally disregarded the purport of the Statement of Gene A. DiMaria, Richards' Probation Officer, that "Mr. Richards has submitted on a random basis, 9 urinalysis samples under supervision of this office. The

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<sup>14/</sup> And so on through all 26 Statements from the character witnesses. (R Exs. 2 through 26 and R Ex. 29).

results of these tests have all been negative (meaning no evidence of drug use by Mr. Ricahrds (sic). Currently, Mr. Richards appears to be complying with his conditions of probation and has posed no significant supervision problems to date." (R Ex. 27).

7. The ALJ found that there was no evidence that Richards attempted to give up his habit until he was apprehended in July 1991 (this date is incorrect as discussed elsewhere in these Exceptions). (ID, ¶15, p.3). This evidence was before the Judge who sentenced him. Richards was a heavy user of marijuana. He has given up the habit. This finding is totally irrelevant and is subsumed by the Judge's Order.

8. Richards testified that there were about 100 marijuana plants ("free volition") which were growing on his land in 1991, which he disposed of on July 4, 1991, before he was arrested on July 25, 1991. (Tr. 77). When asked for the source of the plants, he described his collaboration with the DEA and surmised that the 100 plants grew from seeds which had fallen from 550 pounds of seeded marijuana which had been placed on his land in bales by Mexican smugglers and that this was the result of his cooperation with the DEA to apprehend the smugglers. He conjectured that the seeds had lain dormant until 1991 when he installed an irrigation system to water his crops growing close to the area where the seeds sprouted. (Tr. 155). The ALJ determined that "No credence shall be given to this imaginative, uncorroborated and self-serving account." (ID, ¶14, fn. 7, p.3). This is an "imaginative" determination. Richards' work with the DEA was confirmed by the Mass Media Bureau.<sup>15/</sup> Furthermore, the ALJ implies that Richards was growing 100 plants for his own use, whereas he destroyed the plants many weeks before he was arrested.

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<sup>15/</sup> The Mass Media Bureau actively investigated the facts in this case. Richards' Counsel and Mass Media Bureau counsel worked closely together to expedite the proceeding and to see that it ran smoothly. One of the facts which Bureau counsel confirmed to Richards' counsel was that Richards, indeed, did work for the DEA. As to the growth of the seeds on his land, Richards himself was just opining but the opinion seems to have a solid basis since the plants that were growing on his land were in the same location that the 100 bales of marijuana were placed by the smugglers. (Tr. 155).

(Tr.77). He would have had no reason to be growing them for his own use and then to destroy them.

9. The ALJ found that Richards had been growing marijuana on federal land at the time he was a DEA operative but that there was no evidence he disclosed to the DEA his heavy use or that marijuana was growing on federal land. He concluded from this that Richards shows a propensity to deal dishonestly with government property to his own advantage. (ID, ¶19, p.4). Richards worked with the DEA in 1988 and 1989. (Tr. 161). He was not growing marijuana on his land at that time. (Tr. 154). Until 1991, Richards purchased marijuana for his own use but began growing marijuana in 1991 when the price became too high. (Tr. 154). That he did not tell the DEA that he was a user of marijuana as the ALJ suggests he should have is, to put it kindly, meaningless. The DEA uses informers and collaborators who are users. If the ALJ believes that before he collaborated with the DEA he should have told them "I can't help you because I use marijuana," this is ridiculous as is the ALJ's conclusion that these facts reflect a propensity of Richards' to deal dishonestly.

10. The ALJ notes that he took into account in reaching his decision that at the time of his arrest Richards controlled more than 37 marijuana plants (see Richards' testimony -- Tr. 49 -- it appears the ALJ is adding the 100 plants which Richards destroyed before his arrest), that there was evidence of scales designed to measure small amounts, that there was marijuana debris in one of the rooms, that there were mobile telephones, pagers and heat sealers and Richards' admission that he grew the plants (ID ¶17, pp. 3-4) -- these factors have been discussed above and we stress were before the Judge who imposed sentence on Richards for his dereliction. But the ALJ goes one step further. He states "That circumstantial evidence in the aggregate support (sic) the equally plausible inference that Richards . . . " was not the only intended user of the marijuana which he was

growing. (ID, ¶17, pp.3-4).<sup>16/</sup> This is a decisional leap which is not justified by the record. The facts were before the Judge who sentenced Richards. The ALJ is not in a position to relitigate Richards' crime or to pyramid conjecture upon supposition to indulge such an inference.<sup>17/</sup>

11. The ALJ found that since the conviction was the result of a plea bargain, not all the relevant facts were included in the record. (ID, ¶25, p.6). As noted heretofore, the only Count which involved a drug dereliction is the one to which Richards pled. Count 5 of the indictment, which was dismissed, related to the use of federal land as set forth in Count One to which he pled, so that the government could seize the ranch. The government did seize the ranch. The FCC has neither the expertise nor the time to indulge in a full-scale trial of Richards' dereliction -- this was not and should not have been a relitigation of the drug case. Since the Mass Media Bureau had been in touch with the United States Attorney about this case (Tr. 127), we must assume that Richards' testimony concerning the surrounding circumstances was accurate. As stated heretofore, we cannot believe the Bureau would have found Richards' testimony concerning the basis for his conviction to be inaccurate but decided not to put on any rebuttal evidence.<sup>18/</sup>

12. The ALJ found that in view of the fact that there were existing liens on the property which the government seized in the amount of approximately \$275,500.00, "the forfeiture is materially mitigated to the extent that the property is used to honor Richards' debts even after the title had passed to the U.S. Government." (ID, ¶9, fn.1, p.2). The value of the land at the time of

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<sup>16/</sup> This unwarranted inference should be evaluated in *pari materia* with the ALJ's inconsistent finding that "The evidence of record would not support a finding of a distribution of marijuana beyond the admitted distributions . . . to a friend and to the traveling companion." (ID, ¶16, p. 3). The latter point will be discussed later in these Exceptions.

<sup>17/</sup> Mass Media Bureau counsel was in touch with the Assistant U.S. Attorney in Arizona. (Tr. 127; see fn. 15, above). No evidence was introduced contradicting the facts as presented by Richards in this proceeding. If Richards was lying, we cannot but believe the Mass Media Bureau would have offered evidence to that effect on rebuttal.

<sup>18/</sup> See footnote 15, above.

seizure was approximately \$1 million. (Tr. 149-50). It is not clear from the record whether the debts underlying the liens were satisfied as a result of the federal government's seizure of the ranch. Since security (liens) is used to cover the payment of a debt if a debtor should default, the loss of the security does not normally mean that the debt is expunged. In this case, while there is some testimony concerning the fact that one or two debts were satisfied, this is open to question. (Tr. 115, et seq.). At any rate, Richards lived on the ranch and farmed it -- that is how he made his living. He lost not only his home but the use of the land to grow his crops. This is a major, major loss -- whether the value is \$1 million, \$500,000.00 or \$400,000.00. The ALJ does not seem to want to recognize the extent of Richards' loss.

13. The Mass Media Bureau introduced into evidence what appeared to be two ledger sheets. (MMB Exs. 4, 5). The ledger sheets were taken from Richards' ranch by the authorities pursuant to a search warrant. (Tr. 58). The ledgers were circa 1977-1980. (Tr. 151). Richards' attorney had shown him the ledgers in connection with preparation for his drug trial. (Tr. 56). However, Richards could not recognize the handwriting on the ledgers and didn't remember the documents which had been prepared some 15 years before and had been found in a clutter of papers which Richards kept at the ranch together with countless other documents. (Tr. 56-58, 63).<sup>19/</sup> Any fair reading of the testimony reflects that while Richards could not recognize the handwriting and could not remember the documents, which is what all the early examination was about *ad infinitum*, he tried to reconstruct what the ledgers reflected. If he had been asked what they purported to be rather than do you recognize the handwriting or remember the documents, the examination would have gone much quicker and been more helpful. Richards was not dissembling, he just couldn't remember 15-year-old ledgers but he was able to reconstruct as best he could what they represented. (Tr. 73, et seq.). When the questioning began concerning MMB 5 and inquiry was

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<sup>19/</sup> The ledgers contained no signatures and consisted mostly of figures.

made as to his recognition of the handwriting, Richards testified that for purposes of the examination, he was willing to go forward, stating "Let's assume it is" (not "assume it is" as quoted by the ALJ, a significant difference in nuance) so that he could be questioned on its contents.<sup>20/</sup> (Tr. 82). The ALJ refers to this response as "flippant." (ID, ¶21, p.5). Undersigned counsel sat through the entire hearing. Whatever Richards' other faults might be, he is not flippant and by no stretch of the imagination could that answer be interpreted as being flippant. What he was saying in essence was - - while I can't remember the document, I will try to answer questions concerning its contents, which is what he proceeded to do. A review of his entire testimony on this point will reveal that other than his failure to remember the documents, Richards was forthcoming in his efforts to reconstruct what they represented.

14. The ALJ found that the two documents (MMB Ex. 4 and MMB Ex. 5) reflected "a series of transactions recorded in excess of \$13,000.00. (ID, ¶21, p.5). In fact, MMB Ex. 5 was "a secondary scratch sheet relating to the first scratch sheet" -- the ledgers were summaries of the same transactions. (Tr. 82).<sup>21/</sup> Based on the ledger sheets which reflected transactions around 1977-1980 (Tr. 151), the ALJ in an amazing perversion of the record, found that "there was ample opportunity for Richards to have also supplied his cousin with marijuana that was grown on the ranch." (ID, ¶17, fn. 9, p. 4). The ALJ obviously stopped at nothing in order to build a construct against Richards which would support his conclusions. There is no evidence whatsoever that in the years 1977 to 1980 Richards was growing marijuana on his land. The record reflects that because the price of marijuana was becoming prohibitive, it was not until 1991 that he began growing it. It

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<sup>20/</sup> After the examination on MMB, Ex. 4 was concluded, Richards was shown MMB, Ex. 5, another ledger sheet.

<sup>21/</sup> So that the total would have been half of the \$13,000.00 figure -- approximately \$6,500.00.

is indeed a stretch beyond all reasonable judicial discretion, to rely upon MMB Exs. 4 and 5 to conjecture that Richards sold marijuana to his cousin in 1977-1978-1979-1980 or any other time.

15. The ALJ found that Richards "insisted that he only purchased marijuana and that he never sold marijuana." He then implies that MMB Ex. 4 and MMB Ex. 5 impeach that testimony. (ID, ¶21, p. 5). Another unwarranted leap of judgment is involved. Richards' testimony concerning the ledger sheets was to the effect that they reflected his purchase of marijuana from his cousin, Terry Cleamons. (Tr. 74, et seq., 153-54). There is no other evidence in this record on the point. For the ALJ to imply that MMB Exs. 4 and 5 somehow contradict Richards' testimony that he never sold marijuana encapsulizes his biased approach to the record.

16. In another leap of judicial discretion, the ALJ held "That circumstantial evidence in the aggregate support (sic) the equally plausible inference that Richards, his friend and his companion (referring to a trip to California with his girlfriend) were not the only users or intended users<sup>22/</sup> of the marijuana that was grown by Richards. (ID, ¶17, p.4).<sup>23/</sup> The ALJ once again pyramids conjecture upon unsubstantiated facts and then speculates an outcome to support his conclusion well beyond the bounds of rational decision making. The marijuana plants that were found on the park land and Richards' land were growing in 1991. The plants were seized and not harvested. Richards was convicted of that crime. The ALJ, without a scintilla of evidence, speculates that Richards had been growing marijuana for use and distribution prior to that date. Once again, this conclusion is reflective of the bias which pervades the ID.

17. The ALJ concludes that "There is no evidence of efforts made to remedy the wrong such as providing assistance to the persons who were harmed by the marijuana that Richards

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<sup>22/</sup> Use is not distribution.

<sup>23/</sup> See footnote 16, above. Also, Richards admitted he was a user and purchased marijuana for his own use; the record is devoid of any evidence that he sold marijuana.

grew and distributed (who and to whom?) or volunteer work on Richards' part with persons who are addicted to drugs." (ID, ¶27, p.6). The question can reasonably be asked, whom did he harm but himself, unless we ascribe to the ALJ's expansion of this record to include sales to a party or parties unidentified, unknown and not yet discovered. Perhaps Richards should be doing missionary work with his friend for whom he grew the 10 marijuana plants, which were never delivered to that friend because the plants were seized prior to harvest. At any rate, this conclusion is, to put it kindly, absurd. It should be noted that the ALJ conveniently overlooks Richards' devotion to bringing the signal of his Station to the citizens residing in the Sierra Vista area who find the programming important. We commend to the Review Board once again the Statements of Richards' character witnesses attesting to their appreciation for being able to receive the programming from the Station and also attesting to the fact that Richards installs antennas at no cost, carries people who can't afford the antennas until they can afford to pay for them and otherwise does whatever he can to help. (See, for instance, R Exs. 8 and 17). Of course, given the ALJ's approach to religious programming, he would not give this much credence. As stated heretofore, while religious programming is not entitled to any more weight than any other just because it is religious, such programming in this case reflects Richards' interest in serving his community.

18. The ALJ exceeded the bounds of sound judicial reasoning in his ID. The evidence of record without indulging presumptive flights based upon unwarranted inferences cannot withstand reasonable scrutiny. Richards was what Richards was -- not a dangerous trafficker. Richards now is what he is -- a man who regrets his marijuana use, who has found religion and is attempting to restructure his life. There is no public policy dictating the termination of his license based on the evidence in this record -- the license should be renewed.



**B. Richards' Conviction, Standing Alone, Does Not Warrant Denial of the Renewal Application.**

19. Richards' Renewal Application was designated for hearing based upon the Commission's Public Notice of September 29, 1989, Commission Clarifies Policies Regarding Licensee Participation in Drug Trafficking, 4 FCC Rcd 7533 (the "Public Notice"). Therein, the Commission noted that eradicating illicit trafficking in narcotics, drugs and other controlled substances is a major federal public policy priority. Noting that it regards drug trafficking as a matter of the gravest concern, the Commission stated its intention, absent extenuating or mitigating circumstances, to take all appropriate steps, including initiating revocation proceedings, with respect to licensees convicted of drug trafficking. Id.

20. The Commission subsequently amplified its concern stating:

Felonious drug trafficking, which involves systematic devotion to a criminal enterprise, has produced according to the President of the United States, "the gravest domestic threat facing our nation today." Indeed, recent legislation permits judicial denial of federal benefits to persons convicted of drug offenses. We think it is within the category of 'egregious' non-FCC offenses entailing such callous disregard for the welfare of fellow citizens as to place at issue the perpetrator's qualifications to be or remain a broadcaster. A doubt certainly exists as to whether someone recently found guilty of such an egregious crime against society would faithfully serve the public in exercise of the vast and important discretion that this agency entrusts to licensed broadcasters.  
[Footnotes omitted.]

Williamsburg County Broadcasting Corp., 5 FCC Rcd. 3034, 3035 (1990).<sup>24/</sup>

21. Put simply, the conduct underlying Richards' conviction does not involve a "systematic devotion to a criminal enterprise" or reflect a "callous disregard for the welfare of fellow citizens." Nor does it amount to "an egregious crime against society." In fact, it is a stretch to label his conduct as "drug trafficking." Richards grew marijuana for his personal use and agreed to grow a friend's marijuana plants and return them to him at maturity for no consideration. Only in the

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<sup>24/</sup> Order to Show Cause -- the Commission's Memorandum Opinion and Order after hearing on the Order is cited South Carolina Radio Fellowship, 6 FCC Rcd. 4823 (1991).